

**Private & Confidential**

**European Commission Work Programme 2016**  
**Key Proposals for Employment and Social Affairs**

**Purpose**

1. To update Members on key EU initiatives due in 2016, particularly relevant for employment and social affairs and welcome debate on European Commission proposals.

**Recommendation**

2. Note the report and provide comments as appropriate.

**Background**

3. Employment and social affairs is a key priority area for COSLA's Brussels Office. At political level, COSLA is represented on the European Committee of the Regions (CoR) Commission for Social Policy, Education, Employment, Research and Culture (SEDEC) and at officer level in the European Sectoral Social Dialogue for Regional and Local Government as Employers. We are concerned with monitoring EU legislative proposals as they are introduced and assessing the potential impact on Scottish Councils and the services they deliver.

**Introduction**

4. In October the European Commission set out its Work Programme for 2016, declaring it as "the year of real social progress". There are 23 key initiatives, based on the 10 key priorities outlined by President Juncker at the beginning of his mandate. Contained within this paper are the most significant items being monitored by COSLA's Brussels Office with regard to employment and social affairs. They are part of efforts to enhance social protection within the EU in light of changing working practices and economic recovery in Europe.
5. The key proposals highlighted in this paper are: 1) a new **European Pillar of Social Rights**, 2) the **Labour Mobility Package** and action to facilitate 3) **Work-Life Balance**. Known as the social package, they will impact wider EU social standards and employment practices and will therefore also have bearing on the Scottish Local Government workforce.

**European Pillar of Social Rights**

6. President Juncker announced the establishment of a European Pillar of Social Rights in September, indicating that it will be an **independent legal document acting as a framework for setting out EU values and monitoring performance**. Intended to boost the social dimension of the Single Market, it will allow the European community to screen common rules relating to employment, welfare and working conditions to ensure they are up to date and fit for purpose.
7. The Commission highlights that economic and social situations within and across EU Member States differ widely putting EU fundamental values and social cohesion at risk. It notes growing economic disparities, wide inequalities, long-term unemployment and lack

of access to good quality social security across Europe. It is therefore making the restoration of social convergence in the EU a clear priority, with the need to advance a social agenda and in the longer term create a "Social Triple A" rating for Europe.

8. In January a first orientation debate took place on the Social Pillar with the College of Commissioners. This confirmed the self-standing nature of the document and set out the purpose which is to evaluate employment and social performance. It is also known that the Pillar will contain a mix of both legislative and non-legislative measures. Commissioner Thyssen, responsible for employment and social affairs, has implied that some legislation will be reviewed and modernised (for example occupational health and safety) with benchmarks and best practice developed for areas where performance has been better. It has also been suggested that new forms of employment, such as zero hours contracts in the UK, may be issues of potential concern.
9. Very recently the Commission provided an update on the overall social package confirming that the Social Pillar will set out essential principles to support well-functioning and fair labour markets and welfare systems. It is now seeking views and has launched a far-reaching public consultation. The consultation will run until the end of 2016 during which time the Commission will participate in extensive debate with stakeholders.
10. The consultation is based on a wide consideration of what constitutes European social values and rights appropriate for a modern context. The aim is to take stock of the present EU social "acquis", new work patterns and gather feedback on the principles identified in a preliminary outline of the Pillar. The preliminary outline covers three main areas:
  - i. Equal opportunities and access to the labour market, including skills development and life-long learning and active support for employment, to increase employment opportunities, facilitate transitions between different statuses and improve the employability of individuals.
  - ii. Fair working conditions, to set an adequate and reliable balance of rights and obligations between workers and employers, as well as between flexibility and security elements, to facilitate job creation, job take-up and the adaptability of firms, and promoting social dialogue.
  - iii. Adequate and sustainable social protection, as well as access to high quality essential services, including childcare, healthcare and long-term care, to ensure dignified living and protection against risks, and to enable individuals to participate fully in employment and more generally in society.
11. The Commission is taking a very broad approach at this stage and it is clear it will look beyond what can be done at EU level. It has however stressed that it will develop the Pillar with full respect for the competences across different institutions and different policy levels. COSLA will undertake a process of consultation with members to develop a Scottish Local Government response. We then expect to contribute to a response from social partners through our European umbrella body the European Council of Municipalities and Regions (CEMR). The Commission has confirmed that EU social partners will play an active role in shaping the Pillar, so our approach will ensure Scottish Local Government viewpoints are built into the policy development process.
12. The Commission states that the European Pillar of Social Rights is an initiative first and foremost for the euro area, but other Member States will be allowed to join. Following the UK-EU Referendum, we expect a greater steer from UK Government.

## **Labour Mobility Package**

13. Related to the creation of a clear set of social rights for all EU citizens, is the Labour Mobility Package which will have the aim to guarantee fair rules for the free movement of workers throughout the Single Market. The European Commission views the deepening of the Single Market across sectors and policy areas as a means to furthering jobs, growth and investment in Europe. It is keen that the EU benefits from the positives aspects of free movement but is also able to minimise its disadvantages. The Labour Mobility Package is part of efforts to make the Single Market fairer, and ultimately protect and empower EU citizens. Proposals identified to date include **a strengthening of the EURES job portal** in cooperation with national employment services, **some level of coordination of social security**, and **a review of the Posting of Workers Directive** so that the employment rights of EU citizens are protected wherever they work in the EU.

## European Employment Services

14. EURES is a cooperation network that brings together the national Employment Services, trade unions and business organisation to enable jobs in one EU country to be advertised in another, and vice versa. The current scope and number of publicised vacancies on the EURES network is viewed as inadequate. The Commission proposes enhancing cooperation between national employment services and building on cross-border recruitment best practice as a means of addressing this. Across Europe there is still a mismatch of job vacancies and the unemployed and by building on EURES the Commission intends to make it easier for EU citizens to move across borders and fill skill shortages.

## Coordination of Social Security

15. Despite limited competence in this area, the Commission maintains that some alterations are required to the coordination of social security. For example a proposal is expected to extend the option to take unemployment benefits to another EU Member State for a period of up to 6 months. This right already exists for 3 months and the extension is in order to facilitate free movement and help address skill shortages in some Member States. Related to this is the plan to codify recent ECJ rulings and case law in order to make it clear that EU citizens without a right to reside are not entitled to unemployment benefits.

16. Another proposal relates to the unemployment benefits of frontier workers (workers that live in one country and work in another). The suggestion is that after one year of working in a country and paying contributions, that country will have the responsibility for paying unemployment benefits. Protecting and providing legal certainty around entitlement to long-term care for mobile citizens, is another issue that will be looked at.

17. Coordination of social security within the EU is generally considered as necessary to ensure that those who are exercising their freedom of movement are treated equally as EU citizens. To what extent systems are coordinated is of course subject to much debate. Current provision at EU level is not designed to harmonise social security systems or guarantee a standard right to benefits throughout the EU. COSLA will continue to monitor developments in this area closely and report back to Members as proposals take shape and the implications for Scottish Councils become clear.

## The Postings of Workers

18. The Postings of Workers Directive defines a core set of employment conditions to be observed by employers while posting workers in another EU state. It entitles posted workers (workers who remains employed in their native country, but are posted to another to carry out duties) to statutory employment rights in the country they are posted to. The core set of mandatory rules on posting covers a wide range of issues such as maximum work periods and minimum rest periods, minimum paid annual leave, minimum rates of

pay, equal treatment between men and women and the conditions of hiring out workers. The legislation also tackles issues such as health and safety at work and includes protective measures in the terms and conditions of employment of pregnant women, of children and of young people.

19. In the view of the Commission, the 1996 Directive needs updated to ensure posted workers are not treated less favourably than “local workers”, are not granted less protection under labour law or receive lower minimum wage and rates of pay. The Commission maintains that the aim of the Directive is to promote cross-border services and facilitate free movement, not allow employers to pay lower wages or permit ‘social dumping’ (moving employees to a country where the labour laws are weaker).
20. A proposal to amend the Directive concerning the postings of workers has therefore been published, to which there are three aspects: ensuring posted workers receive the same rates of remuneration, clarifying that after 2 years of posted work the host Member States’ employment legislation will apply and extending conditions for temporary agency workers to apply in a posted working setting.
21. Among concerns for Scottish Councils are liabilities resulting from sub-contractors not respecting the Directive’s safeguards, particularly in regard to rates of pay in certain sectors such as construction. Additionally there could be further duties on Member States (and Councils as employers) to provide information on the application of the Directive as well as information exchange and cooperation between governments to apply the Directive (in order to ensure that employers do not play one country against the other).

### **Work-Life Balance**

22. Following the withdrawal of maternity leave legislative proposals, the Commission has put forward a new roadmap entitled *New start to address the challenges of work-life balance faced by working families*. The roadmap details three policy options (legislative, non-legislative and combination) to modernise the current EU legal and policy framework and allow for parents with children or workers with dependent relatives to better balance caring and professional responsibilities. Although still intended to address the issue of low participation of women in the labour market, the initiative focusses more on work life balance and gender equality.
23. COSLA’s Brussels Office is active on this issue, leading part of a short life CEMR task group to develop a response to the EU’s consultations. The key legislation under consideration is the Recast Directive, Maternity Leave Directive, Part-time Work and Parental Leave, which the task group has researched and examined before developing an initial response. In our social partner response we argued for a wide range of options, mainly non-legislative, such as EU level benchmarks, regular monitoring, public reporting, and targeted use of EU financial tools, structured social dialogue and awareness raising campaigns. The bottom line of our public consultation response was that there should be some principles agreed at EU level; but how they are best implemented in the Member States should be left to the negotiations of the social partners and the national governments. COSLA and CEMR are currently preparing a detailed survey to seek members’ views on this matter, the outcome of which will be taken forward in the next phase of the consultation process.
24. Additional to the new European Social Pillar, Labour Mobility Package and Work-Life Balance initiatives, COSLA’s Brussels Office is also observing developments concerning the **New EU Skills Agenda, Occupational Health and Safety, Information and Consultation rights, Occupational Pension Funds**, and important **European Court of**

**Justice rulings** with implications for the **Working Time Directive** and **access to social security benefits**.

### **New European Skills Agenda**

25. As part of efforts to give Europe a boost on jobs, growth and investment the European Commission has announced a new skills agenda as part of the 2016 Work Programme. The agenda aims at promoting skills development, including the mutual recognition of qualifications, support for vocational training and higher education and measures to maximise the potential of digital jobs. Although it is not yet fully clear what will be included in the agenda, it is highly likely that it will have a strong focus on developing digital skills and adapting the workforce to the digital age.

### **Occupational Health and Safety**

26. As part of the better regulation agenda (REFIT), 2016 will see EU occupational health and safety reviewed. The Commission is currently looking at the 24 EU Directives on health and safety at work with a view to modernising provision. It is likely that a recommendation to simplify this legislative framework will then follow by the end of the year. Also under preparation is an amendment to the Carcinogens Directive which will set further limit values for some key substances. More widely, the EU Occupational Safety and Health (OSH) Strategic Framework 2014-2020 will be reviewed in 2016 to ascertain the effectiveness of the legislation particularly in terms of implementation.

27. COSLA's Brussels Office has been active on this issue for a number of years, contributing to the 2013 EU consultation on a future occupation health and safety policy framework. COSLA will reaffirm key issues previously raised (for example that EU action in this area should focus on improving existing legislation and address challenges relating to new emerging risks such as occupational disease and demographic change). We also favour activities that simplify administrative, data collection and monitoring burdens on Councils.

### **Information and Consultation of Workers**

28. In April 2015 the European Commission began consulting social partners on the Information and Consultation (I&C) of Workers Directives which gives employees the right to be informed and consulted on a range of key organisational issues. It consists of three Directives: on collective redundancies, transfers of undertakings and a general framework for information and consultation of workers. Previous consultation has focussed on whether the legislation should be consolidated and changed in relation to public administration, which is currently excluded. This is a reaction mostly due to increased public sector modernisation and restructuring. COSLA has concerns about how public administration might be affected specifically around the 'public administration' exemption which has a very narrow definition.

29. In December 2015, the social partners in central administration concluded and signed an agreement on Information and Consultation rights for workers in central administration. The signed agreement also states that "the Committee encourages the Member States to promote setting of minimum requirements for information and consultation rights in local government." Commission representatives have since indicated that the social partners at Regional and Local level should begin preparing an initial outline of acceptable minimum rights. COSLA will continue to participate in social dialogue at EU level to gather further information on this matter.

### **Occupational Pension Funds**

30. Within the EU, institutions of occupational retirement funds (IORPs) hold assets worth €2.5 trillion on behalf of around 75 million Europeans (20% of the EU's working-age population). In March 2014 the Commission put forward a legislative proposal for a new revised IORP directive. Directive 2003/41/EC lays down basic requirements for occupational pension

funds and their regulation including rules which oblige occupational pension funds to invest their assets responsibly. The 2014 revision aims at ensuring the soundness of occupational pensions and better protection for pension scheme members, removing obstacles for cross-border provision of services, and encouraging occupational pension funds to invest long-term in growth, environment and employment enhancing economic activities. Since, the European Parliament ECON Committee has approved the revision. The draft Directive will now be considered in trilogue meetings between the European Commission, Parliament and Council throughout 2016.

### **Working Time Directive**

31. Building on previous consultation, dialogue with social partners and existing studies and analysis, the Commission is currently undertaking a detailed impact assessment of the Working Time Directive. With news of a final decision, COSLA will take forward key arguments from the position adopted previously by the COSLA Strategic Human Resource Management Executive. Fundamental to that position is the belief that possible implications from changes to working time rules on the local government sector must be fully considered. While it can be agreed that EU rules on working time require adjustment, COSLA has consistently called for a comprehensive approach with clear legal definitions. This should be balanced with flexibility for collective bargaining at the national, regional and local level as well as the consideration of employees' individual preferences.

### **European Court of Justice**

32. The following European Court of Justice (ECJ) rulings will have significant impact on how EU legislation on social policy is interpreted going forward.

#### Working Time Directive

33. Last year September, the ECJ ruled that **time spent travelling to work should be counted as working time** under the Working Time Directive. The case was brought by employees of a Spanish security company who argued that the time they spent travelling from home to their first appointment should be considered work. The ruling relates specifically to workers with no fixed office and does not impact those with long commutes to fixed work places. The Court declares that, where workers do not have a fixed or habitual place of work, the time spent by those workers travelling each day between their homes and the premises of the first and last customers designated by their employer constitutes working time within the meaning of the Directive.

#### Access to Unemployment Benefits

34. Late in 2015, the ECJ ruled that **Member States are not obliged to provide unemployment benefits to EU migrants who have not held employment for more than three months**. The verdict is based on the Dano ruling, made in November 2014 where the ECJ concluded that unemployed migrants who had not previously worked in another Member State were not entitled to claim out-of-work benefits there. This follows from the landmark Dano ruling also dealing with Romanians claiming benefits in Germany in spite of having never worked there. The ruling states that nationals of other Member States can claim equal treatment with nationals of the host Member State only if their residence complies with the conditions of the Directive on free movement of EU citizens. The ECJ points out that the Directive on free movement states that economically inactive persons must have sufficient resources of their own and that host Member States are not obliged to grant social assistance during the first three months of residence. The UK-EU deal of February 2016 has tried to give legal certainty in how to apply these restrictions. Nevertheless it is the most sensitive part of the agreement as it makes clearer than ever before that non-nationals can be treated differently, something that can have political repercussions for the EU moving forward.

## **UK/EU Referendum**

This paper is of course being presented in advance of the UK-EU Referendum, with employment and social affairs a likely matter of much debate in the lead up to June. Within the final deal reached at the February EU Summit are a number of provisions for social benefits and free movement. Clarification was provided on the interpretation of current EU rules, in particular, that the right of free movement may be limited on grounds of public policy, security or health, that economically non-active persons require sufficient resources to stay in another Member State and that Member States are able to take action to prevent abuse of rights. There is also legal provision for Member States to calculate child benefits according to the conditions of the Member State where the child resides. This will apply to all new arrivals with the option to extend to all EU migrants by 2020.

35. Also in the agreement is the safeguard mechanism to respond to large unmanageable migration flows and allow Member States to restrict access to non-contributory in-work benefits to necessary extent. All EU Member States will now be allowed to limit newly arriving EU workers access to non-contributory in-work benefits for up to four years, following agreement from the Council.
36. Regardless of the Referendum outcome, Scottish Local Government will still require a position on the matters highlighted above. This is because there exists a considerable body of UK and Scottish law that has already transposed EU legislation into our legal system. COSLA's Brussels Office will continue to develop this body of work, in preparation for either eventuality, to ensure Scottish Local Government interests are protected and where possible advanced.

## **Conclusion**

This paper gives an overview of COSLA activities on employment and social affairs at EU level and draws attention to key pieces of work: 1) the New European Social Pillar, 2) the Labour Mobility Package and 3) Work-Life Balance. This is in addition to other important initiatives under observation including the New Skills Agenda, Occupational Health and Safety, Information and Consultation of Workers and Occupational Pension Funds. COSLA's Brussels office also continues to monitor relevant social and employment ECJ rulings.

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